

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARISSA CORTEZ,

Plaintiff,

v.

NEW CENTURY MORTGAGE CORP.; SAXON
MORTGAGE SERVICES, INC.; OLD
REPUBLIC NATIONAL TITLE INSURANCE
COMPANY; and PACIFIC MORTGAGE
COMPANY,

Defendants.

No. C 11-1019 CW

ORDER DISMISSING
CLAIMS AGAINST
UNSERVED DEFENDANT
AND ALLOWING
PLAINTIFF TO FILE
OPPOSITION TO
MOTION TO DISMISS

On March 4, 2011, this mortgage-related action was removed from state court. On November 3, 2011, the Court issued an Order Granting in Part Defendant Saxon Mortgage's Motion to Dismiss and Ordering Plaintiff to Serve Unserved Defendants. In its motion to dismiss, Defendant Saxon Mortgage asserted that Defendants New Century Mortgage Corporation and Pacific Mortgage Consultants were not served when the case was in state court. The Court noted that the federal docket did not indicate that these Defendants were served after the case was removed and, in a removed action such as this case, a plaintiff must serve the summons and complaint within 120 days of the date of removal to federal court. The Court noted that the time to serve the unserved Defendants had passed, but it granted Plaintiff leave to serve the unserved Defendants within

1 thirty days from the date of the order and ordered her to file
2 with the Court a proof of service for each Defendant. The Court
3 warned Plaintiff that, if she did not serve these Defendants
4 within thirty days, her claims against them would be dismissed for
5 failure to prosecute.

6 More than thirty days have passed from the entry of the last
7 Order and Plaintiff has not filed a proof of service for either
8 Defendant. However, on November 21, 2011, Defendant Pacific
9 Mortgage Consultants filed a motion to dismiss. Because it
10 appears that Pacific Mortgage Consultants may have been served,
11 the Court does not dismiss the claims against it for lack of
12 service. The Court does dismiss all claims against New Century
13 Mortgage Corporation for failure to serve.

14 In its motion, Pacific Mortgage Consultants notes that,
15 pursuant to Civil Local Rule 7-3(a), the deadline to file an
16 opposition to a motion is fourteen days after the motion is served
17 and filed. More than fourteen days have passed since Pacific
18 Mortgage Consultants filed its motion and Plaintiff has not filed
19 an opposition. In the interests of justice, the Court will grant
20 Plaintiff leave to file an opposition, but she must do so within
21 one week from the date of this order. If Plaintiff does not file
22 an opposition within one week, the claims against Pacific Mortgage
23 Consultants will be dismissed for failure to prosecute.

24 CONCLUSION

25 For the foregoing reasons, the claims against New Century
26 Mortgage are dismissed for failure to serve. Plaintiff must file
27 an opposition to Pacific Mortgage Consultants' motion to dismiss
28 within seven days from the date of this order or her claims

1 against it will be dismissed for failure to prosecute. The
2 January 5, 2012 hearing on the motion to dismiss is vacated. The
3 motion is taken under submission and will be decided on the
4 papers. A case management conference is set in this case for
5 February 22, 2012 at 2:00 pm in Courtroom 2.

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7 IT IS SO ORDERED.

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9 Dated: 12/20/2011

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11 CLAUDIA WILKEN
12 United States District Judge
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